

## **FY2012 NDAA -- S. 1253 SASC Committee Report -- Section 841 Legis History**

### **1. Excerpt from Senate Report 112-26: National Defense Authorization Act for Fiscal Year 2012 – REPORT** [TO ACCOMPANY S. 1253]

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#### **Treatment for technical data purposes of independent research and development and bid and proposal costs (sec. 841)**

The committee recommends a provision that would clarify the treatment of independent research and development (IR&D) and bid and proposal (B&P) costs for the purposes of section 2320 of title 10, United States Code, governing rights in technical data. The provision recommended by the committee would ensure government- purpose rights (the right to use the data to ensure competition for future government purchases) in technical data for an item or process that is developed through the expenditure of IR&D and B&P costs in the case of: (1) an item or process for which the contractor contributed less than 10 percent of the cost of development; or (2) an item or process that is integrated into a major system and either: (a) cannot be segregated from the system as a whole; or (b) was developed predominantly at government expense.

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### **2. Excerpt from S. 1253 (RS) – NDAA for FY 2012 -- as reported in Senate**

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## **SEC. 841. TREATMENT FOR TECHNICAL DATA PURPOSES OF INDEPENDENT RESEARCH AND DEVELOPMENT AND BID AND PROPOSAL COSTS.**

(a) Treatment- Section 2320(a) of title 10, United States Code, is amended--

(1) in paragraph (2)(E), by striking `the respective rights' and inserting `the Government may use, modify, release, reproduce, perform, display, or disclose the data pertaining to such item or process within the Government without restriction, but may release or disclose the data outside the Government only for Government purposes. The respective rights';

(2) in paragraph (3), by striking `and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of paragraph (2)(B), but shall be considered to be Federal funds for the purposes of paragraph (2)(A)'; and

(3) by adding at the end the following new paragraph:

`(4)(A) Except as provided in subparagraph (B), amounts spent for independent research and development and bid and proposal costs shall not be treated as Federal funds for the purposes of this section.

`(B) An item or process that is developed in whole or in part with amounts described in subparagraph (A) shall be treated as having been developed in part with Federal funds and in part at private expense in the following circumstances:

`(i) In the case of an item or process for which the total amount of costs referred to in subparagraph (A) allocable to contracts other than Federal contracts and any other contractor funds expended is less than 10 percent of the total funds provided for the development of such item or process (including all sources of Federal funding).

`(ii) In the case an item or process that is integrated into a major system for which the rights in technical data are otherwise described under paragraph (2)(A) or (2)(E) and for which--

`(I) the total amount of such costs allocable to contracts other than Federal contracts and any other contractor funds expended is less than 50 percent of the total funds provided for the development of such item or process (including all sources of Federal funding); or

`(II) such item or process cannot be segregated from other elements of the major system in a practicable manner in order to allow the system to be procured using competition.'.

(b) Effective Date- The amendments made by subsection (a) shall take effect on January 7, 2011, immediately after the enactment of section 824(b)(2) of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383; 124 Stat. 4269), to which such amendments relate.

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